



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF: WC-15J

SEP 10 2010

CERTIFIED MAIL 7001 0320 0006 0190 9299
RETURN RECEIPT REQUESTED

FOIA Exemption (b) (6)

FOIA Exemption (b) (6) Farms, Inc.

FOIA Exemption (b) (6)

Subject: **FOIA Exemption (b) (6)** Farms, Inc. for Compliance and Order to Submit Information
Pursuant to 33 U.S.C. §§ 1318 and 1319(a).
Docket No.: V-W-10-AO-13

Dear **FOIA Exemption (b) (6)**

Protecting water quality is a high priority of the U.S. Environmental Protection Agency. Pollutants such as excessive nutrients and pathogens discharged to waterways from animal feeding operations contribute to poor water quality and impairment of uses of those waterways.

As you know, EPA recently inspected your facility. At the time of the inspection, we found violations of the Clean Water Act (CWA). Enclosed is the above referenced Order for Compliance and Request for Information. You must comply with this Order within the time periods specified in the Order. Failure to comply with the Order may subject you to further enforcement action pursuant to Section 309 of the CWA.

Please send your written responses to the addresses specified in the Order. This Order requires you to immediately cease all unauthorized discharges and to construct the necessary facilities to comply with the CWA. This Order also requires that you submit a complete National Pollutant Discharge Elimination System permit application to Illinois Environmental Protection Agency.

Please be advised that neither the issuance of this order by EPA nor compliance with its terms affects your obligation to comply with the CWA or any other Federal or State laws or regulations, nor does it preclude further enforcement action pursuant to 33 U.S.C. § 1319 for the violations cited herein or any other violations committed by you.

Under the General Provisions within the Order, you have the right to request an informal conference with EPA within ten (10) calendar days of receipt of this Order. Any such conference shall be held within fifteen (15) calendar days from the date of the request, unless extended by the agreement of the parties.

Assistance with constructing structures necessary to comply with this Order may be available through the Environmental Quality Incentives program (EQIP). EQIP was reauthorized in the Farm Security and Rural Investment Act of 2002 (Farm Bill) to provide a voluntary conservation program for farmers and ranchers that promotes agricultural production and environmental quality as compatible national goals. EQIP offers financial and technical help to assist eligible participants install or implement structural and management practices on eligible agricultural land. EQIP is a competitive program. In order to sign up for EQIP, Natural Resources Conservation Service (NRCS) must determine the applicant to be an eligible producer, and the land to be eligible. NRCS assistance is available at any USDA Service Center. EQIP sign-up information is available online at (www.il.nres.usda.gov/programs/eqip/).

Also enclosed is a copy of the report on the Concentrated Animal Feeding Operation Inspection conducted by this Agency on October 22, 2009. If you have any questions concerning this matter, please contact Ms. Cheryl Burdett of my staff at (312) 886-1463.

Sincerely,



for Tinka G. Hyde
Director, Water Division

Enclosures

cc: Mike Garretson, IEPA
Lee Heeren, District Office, IEPA
Bruce Yurdin, IEPA
Lee Heeren, Rockford District Office, IEPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**FOIA Exemption (b) (6) Farms, Inc.
FOIA Exemption (b) (6)**

Respondent

)
) **ORDER FOR COMPLIANCE
AND REQUEST FOR
INFORMATION UNDER
SECTIONS 308 AND 309(a) OF**

)
) **THE CLEAN WATER ACT**

)
) **DOCKET NO: V-W-AO-10-13**

The following Order and Request for Information ("Order") is issued to **FOIA Exemption (b) (6) Farms, Inc.** ("Respondent") under the authority of the Administrator of the U.S. Environmental Protection Agency ("EPA") provided by Sections 308 and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318, 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region 5, who has redelegated this authority to the Director of the Water Division, EPA, Region 5.

I. INTRODUCTION

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Pursuant to the CWA and EPA regulations at 40 C.F.R. Part 122, the owner or operator of a concentrated animal feeding operation ("CAFO") which discharges or proposes to discharge must seek coverage under an NPDES permit. 40 C.F.R. § 122.23(d)(1).
3. EPA has approved the State of Illinois' program to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C § 1342(b). The Illinois Environmental Protection Agency ("IEPA") is the NPDES permitting authority for the State of Illinois ("State"). EPA retains the authority to enforce the CWA in Illinois.
4. This Order shall be effective until IEPA issues an NPDES permit and the EPA has notified the Respondent pursuant to Paragraph 99 that the Respondent has complied with all requirements of this Order.

II. DEFINITIONS

5. All terms used but not otherwise defined in this Order shall have the meaning provided them in the CWA and EPA regulations promulgated under the CWA.
6. "Animal feeding operation" means "a lot or facility where . . . (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a

total of 45 days or more in any 12 month period and, (ii) Crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility." 40 C.F.R. § 122.23(b)(1).

7. "Concentrated animal feeding operation" or "CAFO" means an "animal feeding operation that is defined as, *inter alia*, a Large CAFO or a Medium CAFO...." 40 C.F.R. § 122.23(b)(2).
8. "Discharge" or "Discharge of a pollutant" means, among other things, any addition of any pollutant to navigable waters from any point source. See Sections 502(12) and 502(16) of the CWA, 33 U.S.C. §§ 1362(12), (16); 40 C.F.R. § 122.2.
9. "Land Application Area" means land under the control of the Respondent, whether that land is owned, rented or leased by Respondent, or subject to an access agreement between the owner of the land and the Respondent, to which manure, litter, or process wastewater from the Production Area is or may be applied.
10. "Large CAFO" means an animal feeding operation that stables or confines as many as or more than the numbers of animals specified in any of the following categories: 1,000 cattle other than dairy cows or veal calves; 700 mature dairy cows; 2,500 swine each weighing 55 pounds or more; or 10,000 swine each weighing less than 55 pounds. 40 C.F.R. § 122.23(b)(4).
11. "Manure" means, among other things, "manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal." 40 C.F.R. § 122.23(b)(5).
12. "Navigable waters" means the waters of the United States. Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
13. "Nutrient Management Plan" shall mean the plan described in and required by this Order.
14. "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure.
15. "Person" means, among other things, an individual, association, partnership, or corporation. Section 502(5) of the CWA, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
16. "Point source" means, among other things, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, ... [or] concentrated animal feeding operation ... from which pollutants are or may be discharged." Section 502(14) of the CWA, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.
17. "Pollutant" means, among other things, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar

dirt, and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.

18. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. 40 C.F.R. § 122.23(b)(7).
19. "Production Area" means that part of the Site that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. 40 C.F.R. § 122.23(b)(8).
20. "Site" shall mean the facility owned or operated by Respondent at 4809 Stone Church Road, Pearl City, Illinois, 61062, which includes the Land Application Area and the Production Area.
21. "Water of the United States" means, among other things (40 C.F.R. 122.2):
 - a. all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce . . .;
 - b. all interstate waters . . .;
 - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters. . .;
 - d. all impoundments of waters otherwise defined as waters of the United States under this definition; and
 - e. tributaries of waters identified in paragraphs (a) through (d) of this definition . . .

III. FINDINGS

22. Respondent is a person who owns or operates a dairy operation located at the Site.
23. The Site is an Animal feeding operation because:
 - a. the Site includes lots or facilities where dairy cows have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
 - b. crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
24. The Site is a CAFO and a large CAFO because Respondent stables or confines 700 or more mature dairy cows at the Site.
25. On October 22, 2009, EPA personnel conducted an inspection at the Site (the "Inspection"). A copy of the report generated by EPA as a result of the Inspection ("Inspection Report") is included as Attachment 1 to this Order.
26. During the Inspection, EPA personnel identified the following discharge pathways at the Site:
 - a. runoff from the silage area flowed into a roadside ditch along Stone Church Road. This ditch flows to an unnamed tributary which flows to the East Plum River;
 - b. runoff from the mortality pile flowed into a ditch which flows to the unnamed tributary which flows to the East Plum River;
 - c. runoff from the sand pile (located northwest of the manure storage pond) flows into a ditch which flows to the unnamed tributary which flows to the East Plum River; and
 - d. runoff from the areas between barns on the Site flow through a trench and ditch to the roadside ditch along Stone Church Road. This ditch flows to an unnamed tributary which flows to the East Plum River.
27. The East Plum River flows to the Plum River, which flows to the Mississippi River.
28. The unnamed tributary, East Plum River, Plum River and Mississippi River are each a perennial water, a navigable water, and a water of the United States.
29. The Site is a point source.

30. The discharges described in Paragraph 26 are each a discharge of a pollutant(s).
31. As of October 22, 2009, Respondent did not have, and had not applied for, an NPDES permit for the discharge of pollutants from the Site.
32. As a CAFO which discharges, the Site is subject to the NPDES permitting requirements of Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.
33. As a CAFO with 770 mature dairy cows, the Site is Subject to the effluent guidelines of 40 C.F.R. Part 412.
34. By discharging pollutants without a permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
35. By discharging pollutants from the Site without having applied for an NPDES permit, Respondent violated 40 C.F.R. § 122.23(d).

IV. COMPLIANCE REQUIREMENTS

BASED ON THE FOREGOING FINDINGS and the authority vested in the undersigned
Director, Water Division, Region 5, IT IS HEREBY ORDERED:

A. Notification of Intent to Comply

36. Within 10 calendar days of the effective date of this Order (as specified in Section VII below), Respondent shall submit a written certification that it intends to comply with this Order.

B. Interim Measures

37. Upon the effective date of this Order, Respondent shall cease all unpermitted discharges from the Site.
38. Upon the effective date of this Order, Respondent shall implement interim measures to eliminate the unauthorized discharges identified in Paragraph 26.
39. Respondent shall operate and maintain the Interim Measures until Respondent constructs and begins operation of all storage structures required by the Nutrient Management Plan under Section IV.D. of this Order.

C. NPDES Permit

40. Within 120 calendar days of the effective date of this Order, Respondent shall submit a complete NPDES permit application ("Permit Application") to IEPA. The Permit Application shall include all information required by this Order. At the same time that it submits the Permit Application to IEPA, Respondent shall submit a copy of the Permit Application to EPA.
41. The Permit Application may be either an application for an individual permit or a Notice of Intent for coverage under Illinois General NPDES Permit No. ILA01 (October 20, 2009).
42. In the Permit Application, Respondent shall provide:
 - a. all information required by EPA Forms 1 and 2B. Those forms can be obtained at on the Internet at the following address:
http://cfpub.epa.gov/npdes/pubs.cfm?program_id=0;
 - b. a topographic map indicating the locations of the Production Area and Land Application Area;
 - c. a Nutrient Management Plan that satisfies the requirements of Section IV.D. of this Order;
 - d. a stormwater management plan to minimize the discharge of pollutants into stormwater at the Site; and
 - e. a spill control and prevention plan which addresses containment methods, clean-up procedures, and disposal procedures for any livestock waste spilled outside of the Production Area.
43. If Respondent elects to apply for an individual NPDES permit, Respondent shall, in addition to the information required in this Order, include in the Permit Application any other information required by IEPA.
44. Within 10 calendar days of receiving a final NPDES permit from IEPA, Respondent shall submit a copy of that final permit to EPA.
45. In addition to obtaining an NPDES permit, Respondent shall obtain all required state and local approvals and permits for the Site. Respondent shall provide copies of these approvals and permits to EPA within 10 calendar days of receiving such approvals and permits.

D. Nutrient Management

46. Respondent shall implement and comply with all the requirements of the Nutrient Management Plan upon its submittal, which includes:
- a. be based on a field-specific assessment of the potential for nitrogen and phosphorous transport from each field in the Land Application Area and shall address the form, source, amount, timing and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorous movement to surface waters;
 - b. address all land application requirements of this Order;
 - c. include procedures in accordance with this Order for the construction, operation, and maintenance of structures for the storage of manure, litter, and process wastewater generated at the Production Area (“Waste Storage Plan”);
 - d. ensure that mortalities (i.e., dead animals) are:
 - i. not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat mortalities; and
 - ii. handled in such ways as to prevent the discharge or pollutants to surface water;
 - e. ensure that clean water is diverted, as appropriate, from the Production Area;
 - f. prevent direct contact of confined animals with waters of the United States;
 - g. ensure that chemical wastes and other non-livestock wastes handled on-site are not disposed of in the Production Area or any manure, litter, process wastewater, or storm water storage or treatment system unless such system is specifically designed to treat such chemicals and other contaminants;
 - h. identify site-specific conservation practices to be implemented, including, as appropriate, buffers or equivalent practices, to control discharges of manure, litter, or process wastewater to waters of the United States;
 - i. identify protocols for appropriate testing of manure, litter, process wastewater, and soil, in accordance with this Order;

- j. identify specific records that will be maintained to document the implementation and management of the requirements of this Order; and
- k. include practices to inspect, monitor, manage, and repair subsurface drainage systems at the Land Application Area.

Land Application Requirements

- 47. The Nutrient Management Plan must identify protocols for the land application of manure, litter and process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.
- 48. The Nutrient Management Plan must demonstrate how adequate erosion and runoff control will be used to prevent the discharge of manure, litter, or process wastewater.
- 49. The Nutrient Management Plan must demonstrate how manure, litter, and process wastewater will not be land applied closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. However, this requirement shall not apply provided that Respondent either:
 - a. imposes a 35-foot wide vegetated buffer in which Respondent will not land apply manure, litter or process wastewater; or
 - b. demonstrates that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.
- 50. The Nutrient Management Plan must that demonstrate manure, litter, or process wastewater will not be applied in a 10-year floodplain unless injected or incorporated into the soil.
- 51. The Nutrient Management Plan must demonstrate that manure, litter, or process wastewater will not be surface applied within 200 feet of potable water supply wells.
- 52. Respondent shall not surface apply manure, litter, or process wastewater at the Land Application Area during the following times:
 - a. when soil is saturated by rainfall within the 24 hour period preceding the proposed time of application;
 - b. when soil is frozen, or covered with ice or snow;

- d. during precipitation when the land is saturated or when precipitation will produce runoff of manure, litter or process wastewater.

The prohibition in this Paragraph shall not apply to land application in any field which is downslope from waters of the United States, sinkholes, open tile line intake structures, and other conduits to waters of the United States.

- 53. The Nutrient Management Plan must include the following limitations for land application of manure, litter, and process wastewater for each field at the Land Application Area:

- a. Nitrogen

the annual rate of nitrogen added through land application shall not exceed the nitrogen fertilizer recommendation (removal value for legumes) for the crop grown in the first year after the land application;

- b. Phosphorus

- i. if the Bray P1 or Mechlich soil test is 300 pounds per acre or more for the top seven inches of the soil profile in a field, land application shall be discontinued until nutrient use by crops reduces phosphorus Bray P1 test levels to less than 300 pounds per acre in that field; or
- ii. if the Bray P1 or Mechlich soil test level is 150 pounds per acre to 299 pounds per acre for the top seven inches of the soil profile in a field, land application shall be reduced to an annual rate such that phosphorus added by land application does not exceed the annual phosphorus removed by the crop in that field.

- 54. The Nutrient Management Plan must demonstrate how Respondent will comply with the provisions of 40 C.F.R. § 122.42(e)(5).

Sampling for Land Application

- 55. In accordance with the Nutrient Management Plan, Respondent shall conduct annual analyses of representative samples of any manure, litter, and process wastewater to be land applied. Respondent shall analyze the samples for the following parameters: Total Kjeldahl Nitrogen (mg/l), ammonia nitrogen (mg/l), total phosphorus (mg/l), and percent total solids.
- 56. In accordance with the Nutrient Management Plan, for each field in the Land Application Area to which Respondent applies manure, litter, or process wastewater, Respondent

shall sample and analyze the soil at that field for phosphorous content (Bray P1 or Mechlich) a minimum of once every five years.

Land Application Inspections

57. In accordance with the Nutrient Management Plan, Respondent shall, within 24 hours prior to and after each land application of liquid manure or process wastewater at the Land Application Area, inspect the subsurface drainage systems at each field where that land application occurred, to insure that manure or process wastewater is not being discharged to Waters of the United States.

Land Application Records

58. In accordance with the Nutrient Management Plan, Respondent shall record the following information for each day during which manure, litter, or process wastewater is applied to the Land Application Area. These records shall separately address each field at which land application occurs and shall include:
- a. the location of the field;
 - b. the size of the field;
 - c. expected crop yields;
 - d. the date and time manure, litter, or process wastewater is applied;
 - e. an estimate of the amount of precipitation 24 hours prior to, and for 24 hours after, the application;
 - f. soil water conditions at the time of each land application (e.g., dry, saturated, flooded frozen, snow-covered);
 - g. test methods used to sample and analyze manure, litter, process wastewater, and soil;
 - h. explanation of the basis for determining application rates for manure, litter, and process wastewater;
 - i. the amount of manure, litter, or process wastewater applied in either gallons, net tons or dry tons per acre;
 - j. calculations showing the total nitrogen and phosphorus to be applied, including sources other than manure, litter, or process wastewater;
 - k. total amount of nitrogen and phosphorus actually applied, including documentation of calculations used to determine the total amount applied;

- l. the method used to apply the manure, litter or process wastewater (e.g., surface, surface with incorporation, injection); and
- m. results of the inspection of subsurface drainage systems conducted pursuant to this Order.

Transfers of Manure, Litter, or Process Waste Water to Other Persons

- 59. In accordance with the Nutrient Management Plan, where Respondent transfers manure, litter, or process wastewater to another person, Respondent shall create a record of the transfer. For each transfer, the transfer record shall indicate the date of the transfer, the name and address of the recipient of the transfer, and the approximate amount of manure, litter, or process wastewater transferred.
- 60. In accordance with the Nutrient Management Plan, prior to transferring manure, litter, or process wastewater to another person, Respondent shall provide that person with the most current annual nutrient analysis for that manure, litter, or process wastewater.

Storage of Manure, Litter, and Process Wastewater

- 61. The Nutrient Management Plan shall include protocols for the storage of manure, litter, and wastewater (the "Waste Storage Plan"). The Waste Storage Plan required as part of the Nutrient Management Plan shall provide for the design, construction, operation, and maintenance of structures (e.g., anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, etc.) to be used at the Site for manure, litter, and process wastewater storage. The Waste Storage Plan shall be developed by a registered professional engineer.
- 62. The Waste Storage Plan shall demonstrate that the storage structures have sufficient volume such that no manure, litter, or process wastewater discharges occur from the Production Area, except when precipitation causes an Overflow of manure, litter, or process wastewater from structures that are designed, constructed, and maintained to contain all manure, litter, and process wastewater, including runoff and direct precipitation from a 25-year, 24-hour (or greater) rainfall event. At a minimum, the structures must have a volume sufficient to store all of the following amounts:
 - a. normal precipitation (less evaporation) on the surface of the structures during the periods contemplated in this Order;
 - b. normal runoff during the periods contemplated in this Order from the Production Area and any upslope areas from which the clean runoff is not diverted around the Production Area;

- c. residuals that remain after materials are removed from the structures;
 - d. all manure, litter, and process wastewater generated during periods when land application does not occur;
 - e. direct precipitation on the surface of the structure and runoff to the structure from a 25 year, 24 hour storm; and
 - f. freeboard requirement: for earthen open surface liquid storage structures other than those equipped with an engineered stable overflow point such that structural failure will not occur during an Overflow, two feet of freeboard above the capacity necessary to contain the direct precipitation and runoff from a 25 year, 24 hour rainfall event.
63. Not later than 120 days after submittal of the Nutrient Management Plan, Respondent shall construct, operate, and maintain all storage structures required by the Waste Storage Plan in accordance the schedule and requirements in the Waste Storage Plan and with all other requirements of this Order.
64. If the Waste Storage Plan provides for a storage volume that is less than the volume of manure, litter and process wastewater that Respondent reasonably expects to add to the structure(s) during 180 days of continuous storage with no land application, Respondent shall include in the Waste Storage Plan a technical analysis which demonstrates that the lesser volume will assure compliance with this Order.
65. Dewatering and Solids Removal: The Waste Storage Plan shall include criteria and procedures for the dewatering of, and removal of solid material from, all storage structures identified in the Waste Storage Plan, as necessary to ensure that sufficient storage volume remains in the storage structures to comply with this Order at all times;
- a. any land application of materials removed from the storage structures shall be performed in accordance with the requirements of this Order; and
 - b. respondent shall measure and record the amounts of material removed from the storage structures pursuant to this Paragraph.
66. Capacity Depth Markers: All storage structures identified in the Waste Storage Plan shall be equipped with permanent capacity depth markers. The permanent capacity depth markers shall be clearly marked to indicate the applicable capacity required below:
- a. the minimum capacity necessary to contain the runoff and direct precipitation of a 25-year, 24-hour rainfall event; and

- b. for any earthen open surface liquid storage structures, two feet of freeboard above the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year 24-hour rainfall event, except that this provision shall not apply to any earthen open surface liquid storage structure equipped with an engineered stable overflow point such that structural failure will not occur during an Overflow.
- 67. In accordance with the Nutrient Management Plan, whenever the amount of freeboard in any earthen open surface liquid storage structure is less than two feet, Respondent shall take immediate steps to reduce the volume of material in that storage structure to a level such that the amount of freeboard in the storage structure is equal to or greater than two feet. Nothing in this Paragraph shall excuse noncompliance with any other provision of this Order.
- 68. In accordance with the Nutrient Management Plan, within three calendar days of discovering that two feet of freeboard had not been maintained in any earthen open surface liquid storage structure, Respondent shall notify IEPA and EPA in writing that proper freeboard was not maintained and that corrective steps were taken. Such notification shall include the specific storage structure affected, the amount of freeboard remaining at the time of notification, and the corrective actions taken by Respondent to maintain adequate freeboard in accordance with this Order.

E. Site Inspections

- 69. Upon the effective date of this Order, the Respondent shall conduct the following inspections:
 - a. daily inspections of water supply lines, including drinking water or cooling water lines;
 - b. weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the containment structures;
 - c. weekly inspections of the storage structures, including inspection for discharge caused by Overflow, broken pipes or equipment failure, and any leaks, seeps, erosion, or damage caused by burrowing animals;
 - d. weekly determinations of the depth of the manure and process wastewater in all open surface liquid storage structures as indicated by the capacity depth markers required of this Order; and
 - e. periodic inspections of equipment used for the land application of manure, litter, or process wastewater.

70. Starting not later than 10 calendar days after completion of construction of all structures required under the Waste Storage Plan, Respondent shall conduct the following inspections as required under paragraph 69.
71. Respondent shall correct any deficiencies identified through the inspections conducted pursuant to this Subsection as soon as possible.
72. Respondent shall prepare and maintain records of each inspection conducted pursuant to this Subsection. Respondent shall record the following information for each weekly inspection:
 - a. the date of each inspection;
 - b. the amount of freeboard in each storage structure during each inspection;
 - c. any deficiencies noted during each inspection and the actions taken to correct those deficiencies; and
 - d. for any deficiencies not corrected within 30 days of discovery, an explanation of the factors preventing immediate correction.

F. Discharge Minimization and Notification

73. Within 30 calendar days of the effective date of this Order, Respondent shall post at the Site, and ensure that all employees are fully aware of, the proper procedures to effectively respond to any spill or discharge to waters of the United States. The posted procedures shall contain detailed response instructions to include, but not be limited to, names of officials to be notified, State and federal agencies to be notified, local or downstream public water supply and public health entities to be notified, appropriate phone numbers, addresses, safety precautions, and immediate actions to abate the occurrence.
74. This Order does not authorize Respondent to discharge pollutants to waters of the United States at or from the Site, and any such discharges may be subject to enforcement. If for any reason, Respondent discharges pollutants to waters of the United States, Respondent must visually monitor the discharge, and immediately notify the EPA by contacting Cheryl Burdett by telephone at (312) 886-1463 and by fax at (312) 692-2064. Respondent must also immediately notify the Illinois Emergency Management Agency at (800) 782-7860 or (217) 782-7860. In addition, Respondent must document the following information and submit a written report to the EPA and IEPA within five (5) days of becoming aware of the discharge, including:
 - a. a description of the cause of the discharge, including an estimate of the discharge volume, an estimate of the flow rate if the discharge is continuing, and any analytical data;

- b. a description of the area receiving the release (i.e., field, ditch, stream, or other description);
- c. the specific location of the discharge;
- d. the period of discharge, including exact begin and end dates and times, and if not corrected, the anticipated time the discharge is expected to continue;
- e. a description of steps taken or to be taken to respond to, contain and mitigate the discharge;
- f. corrective action taken to prevent recurrences of the discharge; and
- g. a description of apparent impacts to health or the environment resulting from the release, including, but not limited to, threats to surface water supplies, water supply wells, recreational areas and water quality.

G. Record Retention and Annual Reporting

75. The Respondent shall maintain at the Site and shall make available to EPA and IEPA personnel upon request copies of records created pursuant to this Order. Respondent shall maintain each such document for at least five years from the date such document was created. The following records include:
- a. a complete copy of the Permit Application; including a copy of the Nutrient Management Plan;
 - b. all records identified under the Nutrient Management Plan;
 - c. reports of the depth of the manure and process wastewater in open surface liquid storage structures as indicated by the capacity depth markers required of this Order;
 - d. records documenting the current design of any manure, litter or process wastewater storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;
 - e. records of the date, time and estimated volume of any Overflow;
 - f. copies of all results of sampling required of this Order;
 - g. records of land application area inspections and corrective action as required of this Order;

- h. all land application records required of this Order;
 - i. records required of this Order documenting transfers of manure, litter or process waste water to other persons;
 - j. a copy of the criteria and procedures for the solids removal and dewatering of containment structures required of this Order;
 - k. records of materials removed from storage structures; and
 - l. inspection records required of this Order.
76. Not later than March 15 of each calendar year, Respondent shall submit to EPA and IEPA an annual report. In each Annual Report, Respondent shall include the following information for the previous calendar year prior to submittal of that Annual Report:
- a. the maximum number and type of animals confined, whether in open confinement or housed under roof;
 - b. the estimated amount of total manure, litter, and process wastewater generated by the Site in the previous 12 months;
 - c. the estimated amount of total manure, litter, and process wastewater transferred to another person by the Respondent from the Site in the previous 12 months (tons/gallons);
 - d. the total number of acres for land application covered by the Nutrient Management Plan;
 - e. the total number of acres under the control of Respondent that were used for land application of manure, litter, and process wastewater in the previous 12 months;
 - f. a summary of all manure, litter, and process wastewater discharges from the Production Area that have occurred in the previous 12 months, including the date, time, and approximate volume; and
 - g. a statement indicating whether the current version of the Nutrient Management Plan was developed or approved by a certified nutrient management planner.

V. REQUEST FOR INFORMATION

77. Pursuant to the authority of Sections 308(a) of the CWA, 33 U.S.C. § 1318(a), EPA is

requiring Respondent to submit information. Section 308 provides that: "Whenever required to carry out the objective of [the CWA], ...the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment and methods (including where appropriate, biological monitoring methods), (iv) sample such effluent... and (v) provide such other information as he may reasonably require; and the Administrator or his authorized representative, upon presentation of his credentials, shall have a right of entry to ...any premises in which an effluent source is located or in which any records...are located, and may at reasonable times have access to and copy any record... and sample any effluents ..."

78. Within 30 calendar days of the effective date of this Order, Respondent shall submit to EPA and IEPA the following documentation concerning the Interim Measures:
 - a. a detailed description of the Interim Measures implemented pursuant of this Order;
 - b. documentation (*e.g.*, as-built diagrams, photographs, affidavits, etc.) showing that Respondent completed installation of the Interim Measures; and
 - c. an accounting of the costs incurred by Respondent to install, implement, and maintain the Interim Measures.
79. For the time period five years prior to October 22, 2010, identify each date that Respondent stabled or confined and fed or maintained mature dairy cows.
80. For each date identified in response to Paragraph 79, identify the number of mature dairy cows that Respondent stabled or confined and fed or maintained at the Site.
81. For each date identified in response to Paragraph 79, identify whether crops, vegetation, forage growth, or post-harvest residues (sufficient to sustain the full nutritional needs of the livestock present) were sustained in areas at the Site at which mature dairy cows were stabled or confined and fed or maintained. If such crops, vegetation, forage growth, or post-harvest residues were maintained at such areas, identify the number of mature dairy cows in such areas.
82. Within 30 calendar days of receipt of this Order, Respondent must provide to EPA a record of the costs Respondent has incurred and will incur to ensure that Respondent's operation is in compliance with the requirements of this Order including, but not limited to the following:
 - a. cost estimates for the design of the storage structure(s) identified in the Waste Storage Plan;

- b. cost estimates for the construction of the storage structure(s) identified in the Waste Storage Plan;
 - c. cost estimates to maintain adequate capacity in the storage structures identified in the Waste Storage Plan; and
 - d. cost estimates to comply with each of the other requirements of Paragraph 46 of this Order.
83. Any failure to comply with this request for information may result in enforcement action under the authority of Section 309 of the CWA, 33 U.S.C. § 1319, which provides for specified civil and/or criminal penalties.

VI. SUBMITTALS

84. Any documents or notifications required by this Order to be submitted to EPA shall be submitted by Respondent to the following address:

Director, Water Division
Region 5, EPA
Attn: Cheryl Burdett
Water Enforcement Compliance Assurance Branch (WC-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

85. Any documents or notifications required by this Order to be submitted to IEPA shall be submitted by Respondent to the following address:

Illinois Environmental Protection Agency
Bureau of Water
Compliance Assurance Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

86. All submittals made pursuant to this Order shall be returned under an authorized signature containing the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

87. If the signatory finds at any time after submittal of information that any portion of the submittal is false or incorrect, the signatory shall notify EPA, Region 5 immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), as well as 18 U.S.C. §§ 1001 and 1341.

Confidentiality of Submissions

88. Information may not be withheld from the Administrator or his authorized representative because the information is viewed as confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent is entitled to assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as provided in 40 C.F.R. § 2.302(a)(2). The regulations provide that a person may assert a business confidentiality claim covering part or all of the information furnished to EPA at the time such information is provided to EPA. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). EPA is required to consider information processes entitled to protection as trade secrets (33 U.S.C. § 1318(b) and 18 U.S.C. § 1905), except that effluent data (as defined in 40 C.F.R. § 2.302(A)(2)) and information in permit applications may not be considered by EPA as confidential. 40 C.F.R. § 122.7.
89. If Respondent fails to assert a claim of business confidentiality, EPA may make all submitted information available to the public without further notice. Information which is subject to a claim of business confidentiality may be available to the public only to the extent provided in 40 C.F.R. Part 2, Subpart B.
90. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

VII. EFFECTIVE DATE AND OPPORTUNITY TO CONFER

91. Within 10 days after receipt of this Order, Respondent may request an informal conference with EPA. Any such conference shall be held within 15 calendar days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person, participate by telephone, or be represented by an attorney or other representative. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. This conference is not a formal evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. To request an informal conference, Respondent should contact Cheryl Burdett at (312) 886-1463 or Respondent's attorney may contact Charles Mikalian, EPA Region 5, Office of Regional Counsel at (312) 886-2242.
92. Regardless of whether a conference is requested, Respondent may submit to EPA in writing via certified mail any relevant information, arguments or comments, and such

information must be received by EPA within 10 calendar days of Respondent's receipt of this Order, unless extended by agreement of the parties.

93. Unless Respondent requests a conference or submits information pursuant to this Section of the Order, this Order is effective 10 calendar days after its receipt by Respondent. If Respondent requests an informal conference or submits written information pursuant to this Section of the Order, this Order will become effective 10 days after the informal conference or EPA's receipt of written submittals, whichever is later unless, based on information presented by Respondent, EPA withdraws or modifies this Order. If EPA modifies this Order based on information presented by Respondent, the Order, as modified, is effective upon receipt by Respondent.

VIII. GENERAL PROVISIONS

94. This Order is not a permit under the CWA, and does not waive or modify Respondent's ongoing obligation and responsibility to ascertain and comply with all applicable federal, State or local laws, regulations, ordinances, permits, or licenses.
95. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein, for any other violations of the CWA committed by Respondent, or to enforce this Order.
96. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may:
- a. assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of \$11,000 per day for each violation that occurred after March 15, 2004 through January 12, 2009 and \$16,000 per day for each violation that occurred after January 12, 2009. An administrative penalty action may total up to \$157,500 for violations that occurred after March 15, 2004 through January 12, 2009, and \$177,500 for violations that occurred after January 12, 2009;
 - b. seek civil injunctive relief and penalties for violations of the CWA under 33 U.S.C. § 1319(b) and 40 C.F.R. Part 19. EPA may seek civil judicial penalties of \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, and may seek civil judicial penalties of \$37,500 per day for each violation that occurs after January 12, 2009; and
 - c. EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

97. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

IX. CERTIFICATION OF COMPLETION

98. Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent shall submit a written certification of completion describing actions taken to comply with all requirements of this Order.
99. Based on Respondent's certification of completion that the Respondent has satisfied all requirements of this Order, EPA shall notify the Respondent whether it has satisfied the Order.

Date:

9/9/10

for


Tinka G. Hyde

Director, Water Division